



The **WALT DISNEY** Company

Marsha J. MacBride
Vice President
Government Relations

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FEDERAL COMMUNICATIONS COMMISSION
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September 18, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB204
Washington, D.C. 20054

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Re: CC Docket Nos: 98-147 and 96-98

Dear Ms. Roman Salas:

Filed herewith, on behalf of The Walt Disney Company, are an original and four copies of Comments in the above referenced proceeding. Also being filed is a diskette containing an electronic version of the comments.

Truly yours,

Marsha J. MacBride

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
and)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the)	
Telecommunications Act of 1996)	

**Comments of
The Walt Disney Company**

I. Introduction

The Walt Disney Company (TWDC) submits these Comments in response to the Commission's Second Further Notice of Proposed Rulemaking in the above-captioned proceedings.¹ In the *Second Further Notice*, the Commission seeks comment on issues related to rules it implemented under section 251(c)(6) of the Communications Act of 1934, as amended, that require incumbent local exchange carriers (incumbent LECs) to allow competitors to collocate equipment at the incumbent LECs' premises.²

TWDC's main interest in this proceeding is to urge the Commission to encourage the greatest number of competitors to deliver broadband services to the home. TWDC is a neutral party in that it does not own any cable company, incumbent LEC, competitive LEC, data LEC, or other service provider. TWDC is a content provider. As the Commission considers the issues raised in this proceeding, we ask that it maintain fair

¹ See *In re* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, FCC 00-297 (rel. Aug. 10, 2000) (Second Further Notice).

and open access to broadband networks. Such openness fosters a competitive environment and a multiplicity of channels for the delivery of content to the home. Providers of content, such as TWDC, depend upon the fact that telecommunications networks are relatively open to interconnection. We urge the Commission to continue to strengthen policies that create meaningful interconnection opportunities, and to ensure that its collocation rules are flexible enough to accommodate advanced services³ as carriers integrate them into the telecommunications infrastructure.

II. Discussion

The Commission sought comment in particular on the actions it should take in response to *GTE Serv. Corp. v. FCC*.⁴ The Commission also sought comment on other collocation issues, such as whether it can and should modify its collocation rules as they apply to remote terminals, line sharing, and subloop unbundling in order to promote the development and provision of advanced services.⁵

We are witnessing the convergence of television, computing, and telecommunications. For residential consumers to enjoy ubiquitous access to next-generation Internet and Interactive television services, content providers must have a choice of service providers, including cable companies, incumbent LECs, competitive LECs, and data LECs.

² See 47 U.S.C. § 251(c)(6); 47 C.F.R. §§ 51.321, 51.323.

³ The Commission defines “advanced services” as “high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology.” 47 C.F.R. § 51.5.

⁴ See *Second Further Notice*, at ¶¶ 70-98 (seeking comment on what action to take in response to *GTE Serv. Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000)).

⁵ See *id.*, at ¶¶ 70, 99-133.

Therefore, the Commission must ensure that its collocation rules encourage the deployment of as many broadband networks as possible, as quickly as possible, in a competitive environment. That means the Commission must craft a balanced set of rules regarding collocation as it pertains to deployment of advanced services. We commend efforts by incumbent LECs—such as SBC’s Project Pronto⁶—to expand the reach of advanced services to more customers. To encourage this type of effort by the incumbent LECs, the Commission must endeavor not to stifle investment incentives to build out facilities. “Incumbent LECs,” the Commission has observed, must be “able to make their decisions to invest in, and deploy, advanced telecommunications services based on market demand and their own strategic business plans, rather than on regulatory requirements.”⁷

At the same time, as broadband technologies develop, they are increasingly moving from central offices to carriers’ outside plant. The Commission must make sure that reasonable collocation obligations move with them if competition is to continue. Only then will the interconnection opportunities be meaningful. The deployment of remote terminals with advanced capabilities must not result in a loss of openness.

Maintaining such openness will further the Commission’s commitment “to removing barriers to competition so that competing providers are able to compete effectively with

⁶ Project Pronto is an SBC initiative to deploy more fiber optic cable and converge its voice and data backbones into a next generation, packet-switched, Internet-friendly network so that it can use its facilities to offer advanced broadband services such as Digital Subscriber Line (DSL), video, videoconferencing, voice-over-ADSL, interactive services, and home networking. See SBC, *Data: Project Pronto* (visited Sept. 14, 2000) <<http://www.sbc.com/data/network/pronto.html>>.

⁷ *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd. 4761, 4763 (1999) (Advanced Services Order).

incumbent LECs and their affiliates in the provision of advanced services.”⁸ As the Commission has said, one of the purposes of the advanced services proceeding is “to further facilitate the development of competition in the advanced services market ... by strengthen[ing] ... collocation rules.”⁹

We note that the Commission has broad discretion to craft such balanced rules, notwithstanding the D.C. Circuit’s decision in *GTE Serv. Corp.* In that decision, the U.S. Court of Appeals for the D.C. Circuit vacated and remanded back to the Commission rules that would allow competitors a certain amount of flexibility in their collocation arrangements with incumbent carriers, including one rule that would allow a competitive LEC to collocate any equipment that is “used or useful” for interconnection or access to unbundled network elements (UNEs), regardless whether that equipment can serve other functions such as the provision of advanced services.¹⁰

The Court reached its decision on the grounds that the Commission did not sufficiently explain how it derived the rules from the meanings of the words “necessary” and “physical collocation” as used in section 251(c)(6).¹¹ Section 251(c)(6) requires, in relevant part, that incumbent LECs “provide ... for physical collocation of equipment

⁸ *Id.*

⁹ *Id.*, 14 FCC Rcd. at 4763-64.

¹⁰ See *GTE Serv. Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) (vacating in part the *Advanced Services Order*). See also 47 C.F.R. § 51.323(b), (c), (h), (l) (containing rules partially vacated by the D.C. Circuit’s *GTE Serv Corp.* decision); *Advanced Services Order*, 14 FCC Rcd at 4776-78, 4780, 4785 (discussing vacated rules).

¹¹ See *GTE Serv. Corp.*, 205 F.3d at 419, 421-27.

necessary for interconnection or access to unbundled network elements.”¹² The Court said that it did

not mean to vacate the Collocation Order to the extent that it merely requires LECs to provide collocation of competitors’ equipment that is directly related to and thus necessary, required, or indispensable to “interconnection, or access to unbundled network elements.” Anything beyond this, however, demands a better explanation from the FCC.

. . . .

On remand, the FCC will have an opportunity to refine its regulatory requirements to tie the rules to the statutory standard.¹³

It is important to recognize that the Court held that “the disputed terms in § 251(c)(6) [*i.e.*, “necessary” and “physical collocation”] are ambiguous in their meanings” as used in section 251(c)(6).¹⁴ Under the *Chevron* doctrine, courts will defer to an administrative agency’s interpretation of ambiguous statutory language if reasonable and consistent with the statutory purpose.¹⁵ The D.C. Circuit simply concluded that the Commission did not adequately explain the basis for its interpretation of the ambiguous terms “necessary” and “physical collocation.”¹⁶ Significantly, the Court upheld other collocation rules in the *Advanced Services Order*, including rules that require collection “on a LEC’s property beyond the confines of the central office.”¹⁷ The Court said that “[t]here is no doubt here that Congress has delegated to the FCC the authority to issue regulations implementing

¹² 47 U.S.C. § 251(c)(6).

¹³ *GTE Serv. Corp.*, 205 F.3d at 424, 426.

¹⁴ *Id.*, 205 F.3d at 421.

¹⁵ *See id.* *See also* *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984); *Bell Atl. Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997).

¹⁶ *See GTE Serv. Corp.*, 205 F.3d at 422 (stating that “the Collocation Order *as presently written seems* overly broad and disconnected from the statutory purpose enunciated in § 251(c)(6)”) (emphasis added).

§ 251(c)(6).”¹⁸ That authority is amplified by sections 251(a)(1), (c)(2), (c)(3), and (d)(2), as well as section 706 of the Telecommunications Act of 1996.¹⁹

III. Conclusion

For residential users to truly enjoy next-generation Internet and Interactive television content on a wide-scale basis, consumers and content providers need as many delivery paths as possible. On remand, the Commission must ensure that broadband networks remain open in a way that fosters a competitive market for advanced services. To do so, the Commission must make sure that interconnection opportunities are meaningful, including in remote terminals.

Respectfully Submitted,



Marsha MacBride
Vice President, Government Relations
The Walt Disney Company

¹⁷ See *id.*, 205 F.3d at 419, 422, 424-25, 427 (upholding rules governing cageless and adjacent collocation, and cost allocation).

¹⁸ *Id.*, 205 F.3d at 421.

¹⁹ See 47 U.S.C. § 251(a)(1) (obligating all telecommunications carriers to interconnect directly or indirectly with other telecommunications carriers), 251(c)(2) (obligating incumbent LECs to allow interconnection at any technically feasible point on a nondiscriminatory basis), 251(c)(3) (obligating incumbent LECs to provide nondiscriminatory access to unbundled network elements at any technically feasible point), 251(d)(2) (obligating the Commission to consider whether failure to provide access to certain network elements would impair the ability of telecommunications carriers to provide services); Telecommunications Act of 1996, Pub. L. No. 104-104, Title VII, sec. 706(a), 110 Stat. 153 (1996) (codified at 47 U.S.C. § 157 nt) (obligating the Commission “to encourage the development on a reasonable and timely basis of advanced telecommunications capability to all Americans”).